

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



**V**

**SEACOAST MAZDA**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43-b unpaid salary  
RSA 275:43 V unpaid vacation time  
RSA 275:44 IV liquidated damages

**Employer:** Seacoast Mazda, 180 Spaulding Turnpike, Portsmouth, NH 03801

**Date of Hearing:** June 10, 2014

**Case No.** 47872

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on March 31, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on May 7, 2014.

The testimony shows that the claimant was hired on August 4, 2008 and was terminated on March 17, 2014. At the time of the termination the claimant was being paid at \$1,200.00 per week for a forty hour work week. On March 17, 2014 the claimant worked for six hours before being terminated. He believes that he is owed \$180.00 for the hours worked on the last day.

The claimant stated that he had one week of vacation time left when he was terminated. Although he had taken several days the previous August, the days were not consecutive and were approved by the owner, Mr. Ackerman. The claimant testified that his work week was from Monday to Friday yet he often worked on a Saturday and the owner knew of this schedule. When he needed a day here and there, the claimant would ask the owner and then take off the day. The claimant said that this was not deducted from his vacation time.

The claimant also testified that the company reported his weekly wage, to the Department of Employment Security, as \$1,100.00 per week and not \$1,200.00. This misrepresentation shows that he is due the difference of \$100.00.

The employer testified that they did not pay the claimant for his last day of work because he had left work for several weeks when the owner was out of the office.

The employer also stated that the written policy was that if you were owed vacation time it was a "use it or lose it" policy. Although the claimant was paid a week of vacation at the rate of \$1,100.00, it was shown in the policy that vacation time had to be taken in whole weeks unless the owner gave special permission. The amount paid was for the year in which it was earned and at the rate it was earned. This vacation time was paid out upon termination.

The claimant is also seeking liquidated damages because the employer was willful and did not have good cause for their actions.

### **FINDINGS OF FACT**

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V. Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places vacation time into the category of wages when the time is due and owing.

RSA 275:44 IV reads: "If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10% of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever

is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition."

This part of the law allows for a claimant to ask for a finding, up to the amount of the Wage Claim if the Hearing Officer finds that the employer was willful and did not have good cause for their action(s).

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and he met this burden.

The claimant was credible in his testimony that he had an arrangement with the company owner to take days off when requested because of the amount of hours worked during a week. This practice is backed up by the written policy that says all leave has to be taken in a whole week unless there is an agreement with the company owner. It appears that this is what happened. The claimant is due \$1,200.00 for a full week of vacation.

The claimant is also due the \$100.00 that was under reported to the Department of Employment Security. It is common practice that time is paid out at the rate the employee is receiving at the time. The rate does not go back to the time it started to be earned.

Finally the claimant is due the pay for March 17, 2014 for the six hours worked. The employer testified that this time was withheld because the claimant had left work early several times. That issue should have been addressed and not have the claimant's pay held to offset the leaving early. The claimant worked six hours on his last day and those hours should be paid. This part of the Wage Claim is valid in the amount of \$180.00.

There is no finding for the request for liquidated damages. Although the employer seems to work under a set of regulations, there seems to be variations to the written rule if so dictated by the owner. The actions of the office of the employer were not willful and there was good cause for their action. The request for liquidated damages is invalid.

**DECISION AND ORDER**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that he was not paid all vacation pay due, it is hereby ruled that the Wage Claim is valid in the amount of \$1,200.00.

There are also wages due in the amount of \$280.00 for hours worked and the underpayment of some leaves.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$1,480.00, less any applicable taxes, within 20 days of the date of this Order.

/s/

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: July 7, 2014

Original: Claimant  
cc: Employer

TFH/cag